

Letter of Findings Number: 04-20130062
Sales/Use Tax
For Tax Years 2009 and 2010

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ISSUE

I. Sales/Use Tax—Equipment.

Authority: IC § 6-8.1-5-1; IC § 6-2.5-2-1; IC § 6-2.5-5-1; IC § 6-2.5-3-2; Indiana Dep't of State Revenue v. Interstate Warehousing, 783 N.E.2d 248 (Ind. 2003); Wendt LLP v. Indiana Dept. of State Revenue, 977 N.E.2d 480 (Ind. Tax Ct. 2012); [45 IAC 2.2-5-8](#).

Taxpayer protests the assessment of use tax assessed on various items.

STATEMENT OF FACTS

Taxpayer is a retailer of scrap metals and new steel. The Indiana Department of Revenue ("Department") conducted a sales and use tax audit for the tax years 2009 and 2010. As a result of the audit, the Department issued proposed assessments for use tax and interest. The Audit Report notes that:

[Taxpayer] buys all types of ferrous and non-ferrous scrap materials that include steel, various grades of copper, aluminum, various types of brass, stainless steel, and different grades of alloys.

An administrative hearing was conducted and this Letter of Findings ("LOF") results. Further facts will be supplied as required.

I. Sales/Use Tax—Equipment.

DISCUSSION

At the outset, the Department notes that under IC § 6-8.1-5-1(c): "The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." The Department also notes that the rules of statutory construction require that exemption statutes be strictly construed against the Taxpayer. Indiana Dep't of State Revenue v. Interstate Warehousing, 783 N.E.2d 248, 250 (Ind. 2003).

Pursuant to the Indiana Code, a sales tax ("gross retail tax") is imposed on retail transactions made in Indiana unless a valid exemption is applicable. IC § 6-2.5-2-1; IC § 6-2.5-5-1 et seq. Also, a complementary excise tax "known as the use tax, is imposed on the storage, use, or consumption of tangible personal property in Indiana if the property was acquired in a retail transaction, regardless of the location of that transaction or of the retail merchant making that transaction." IC § 6-2.5-3-2(a).

Taxpayer argues that following items are being protested: (a) a proposed assessment of a 1994 trailer; (b) expenditures relating to Taxpayer's scales; and (c) a bridge crane. Each item will be addressed, in turn, below.

(a) 1994 Trailer

Regarding the trailer, Taxpayer states: "[T]he audit summary includes a proposed assessment for a 1994 trailer VIN []. However, sales tax was paid on this trailer at the point of purchase." As proof that it paid the sales tax, Taxpayer provided the Department with a copy of Form ST-108 "Certificate of Gross Retail or Use Tax Paid on the Purchase of a Motor Vehicle or Watercraft."

The Legal Division requests that the Audit Division review the documentation provided by Taxpayer. Subject to that review, Taxpayer's protest is sustained.

(b) Scales

Taxpayer next argues the scales are exempt, stating:

These scales are used in collecting and receiving materials and changing their composition through weighing, sorting, shredding, crushing, torching, and other means.

The Audit Report states that Taxpayer purchases "large amounts of scrap metals that range from aluminum to steel, alloys, brass, and copper along [with] many other scrap metals." The Audit Report further states:

When scrap metals are brought into the facility, they are weighed. Radiation detection equipment is utilized at the weigh scales before the scrap is permitted to be transported into the facility.

The auditor took a tour of the facility; the auditor found the following:

[W]eigh scales are used at the facility to weigh every load of scrap that is brought into the yard and for every load that exits the yard via rail car. The weigh scales allow for the very accurate measurement of the weight of each load that is brought into and taken out of the facility and is a way for the taxpayer to collect this data. According to [45 IAC 2.2-5-8](#), the weigh scales are being used as a means of collecting and tracking data from all loads incoming to the facility whether by [Taxpayer's] own fleet of trucks or by individual's bringing in scrap to be sold to [Taxpayer] as well as all loads that leave the facility.

Taxpayer cites to the recycling exemption statute, found at IC § 6-2.5-5-45.8. However that exemption statute was not in effect for the years at issue in the audit (2009 and 2010). Therefore, it is not applicable to Taxpayer's

argument. Taxpayer in follow-up correspondence to the Department states that "[c]learly scales are used to gather data well beyond that of an 'administrative' nature." But Taxpayer, who bears the burden of proof, has not established this. The auditor found that the scales were for weighing; Taxpayer has not established that the scales at issue do more than that (Taxpayer, as noted above, asserted that the scales "are used in collecting and receiving materials and changing their composition through weighing, sorting, shredding, crushing, torching, and other means." (Emphasis added)). The additional explanation provided by Taxpayer does not describe the weighing scales at issue or how the scales are used (the follow-up explanation discusses "mill scale," which Taxpayer states are "metal flakes that contain liquids such as water and oil.").

The Department finds that Taxpayer has not met its burden of proof under IC § 6-8.1-5-1(c). Taxpayer's protest is denied.

(c) Bridge Crane

The last item at issue is the bridge crane. The Audit Report states in relevant part:

[T]axpayer had purchased a large, overhead crane. When the overhead crane was purchased, sales tax was not paid nor was use tax self-assessed and remitted after the fact. The crane was installed in the new steel building that the taxpayer had recently built. The "new steel" building is a retail center for new steel that the [Taxpayer] sells.

And further in the Audit Report:

The overhead crane is used to unload the extremely heavy and/or extremely large pieces of steel from trucks that are making deliveries of steel for inventory and is used to load the steel for customers making large purchases; an activity deemed to be a non-processing activity as discussed in [45 IAC 2.2-5-8](#).

Taxpayer states in its protest letter:

A portion of the bridge crane, and thus its related cost, serves as a significant and integral portion of the building structure. Accordingly, the taxpayer believes that the portion of the cost should be exempt as real estate construction.

At the hearing, Taxpayer stated that a portion of the crane is incorporated into the building itself, and Taxpayer did not believe that that portion was taxable. Taxpayer, in follow-up correspondence, stated it would be providing "additional information relative to the proposed assessment on the bridge crane." The Department did not receive any additional information or explanation regarding the bridge crane. Taxpayer has not developed its argument regarding the bridge crane, thus Taxpayer has not met its burden of proof. (See *Wendt LLP v. Indiana Dept. of State Revenue*, 977 N.E.2d 480, 485 n.9 (Ind. Tax Ct. 2012) (stating in a footnote parenthetical "that poorly developed and non-cogent arguments are subject to waiver" by the Indiana Tax Court) (citing *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138, 1145 (Ind. Tax. Ct. 2010)). Taxpayer's protest of the bridge crane is denied.

FINDING

Taxpayer's protest of the 1994 trailer is sustained, subject to review of the documentation submitted by Audit. Taxpayer's protest of the scales and bridge crane are both denied.

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